1174.

SUPREME COURT OF THE UNITED STATES.

No. 162.

JOHN TYLER, PRESIDENT, &c , USE, &c., PLAINTIFF IN ERROR,

vs.

JOHN HAND, JOHN HUDDLESTON, AND THOMAS G. BLEWETT.

IN ERROR TO THE DISTRICT COURT U. STATES, FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, printers.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the district court of the United States, for the northern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said district court, before you, between John Tyler, as President of the United States, and successor of Martin Van Buren, who sued as trustee for the use of the orphan children, provided for by the 19th article of the treaty with the Choctaws, plaintiff, John H. Hand, John Huddleston, and Thomas G. Blewett, defendants, a manifest error hath happened to the said John Tyler, who sued as aforesaid, as by his complaint appears; and it being fit that the error, if any there hath been, should be corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington, on the first Monday in December, 1846, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court of the United States, the second Monday of January, A. D. 1845, and of the independence of the United States the 69th year.

Issued the 20th day of September, A. D. 1846.

G. M. RAGSDALE,
Clerk of the district court of the United States, for the northern district of Mississippi.

Citation.

UNITED STATES OF AMERICA,
Northern district of Mississippi.

To John Hand, John Huddleston, and Thomas G. Blewett, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be held at Washington, on the first Monday of December, 1846, pursuant to a writ of error filed in the office of the district court of the clerk of the United States, for the northern district of Mississippi, wherein John Tyler, as President of the United States, and successor in office of Martin Van Buren, who sued as trustee for the use of the "orphan children provided for by the 19th article of the treaty with the Choctaws, is plaintiff, and you are defendants in error, to shew cause, if any there be, why the judgment in said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the 5th December, 1846, and 71st year of American independence.

S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.

Came to hand and executed the 5th Dec., 1846.

ANDREW A. KINCANNON,
Marshal northern district Mississippi.

Marshal's fees.

Serving citation on three defendants, 50 cts. each -	$1 50
Returning citation - - - - -	50
Mileage - - - - - -	4 00
	$6 00

Exemplification.

JOHN TYLER, President, use, &c.,
vs.
HAND, HUDDLESTON, & BLEWETT.

Pleas had at district court of the United States, for the northern district of Mississippi, began and held at the town of Pontotoc, in said district, on the first Monday of June, A. D. 1843; present, the honorable Samuel J. Gholson, judge of said court.

Be it remembered, that on the 11th day of May, 1843, John Tyler, a citizen of the State of Virginia, as President of the United States, sued out of the office of the clerk of the district court of the United States, for the northern district of Mississippi, his certain summons in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, without delay, to summon Thomas G. Blewett, John Huddleston, and John H. Hand, citizens of the State of Mississippi, that they be and appear before the district court of the United States, to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of June next, to answer to John Tyler, who is a citizen of the State of Virginia, and President of the United States, who sues as trustee, for the use of the orphan children provided for by the 19th article of the treaty with the Choctaws, of a plea that they render unto him the sum of thirty-four hundred and fifty dollars, which to him they owe, and from him unjustly detain, to his damage one thousand dollars; and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or

judgment will be given against them by default; and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of December, A. D. 1842, and the 67th year of the independence of the United States. Issued 11th of May, 1843.

[L. S.]

G. M. RAGSDALE, *Clerk.*

Which said summons is endorsed in the words and figures following, to wit:

This is an action of debt, and is founded on ten writings obligatory, made payable to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the nineteenth article of the treaty with the Choctaws, of September, 1830; six of said writings obligatory are dated the 28th day of May, A. D. 1838, and the other four the sixth day of June, A. D. 1838; four of the writings obligatory dated 28th day of May, A. D. 1838, are each for the sum three hundred dollars; another of said writings obligatory, dated 28th day of May, A. D. 1838, is for the sum of six hundred dollars; and the other, dated as last aforesaid, is for the sum of two hundred and fifty dollars; two of the writings obligatory, dated the 6th day of June, A. D. 1838, are for the sum of three hundred dollars each; another, dated as last aforesaid, is for the sum of three hundred and fifty dollars; and the others, dated sixth day of June, A. D. 1838, is for the sum of four hundred and fifty dollars; which said sum of money, and interest, is demanded in this action. Plaintiff sues as successor in office of Martin Van Buren, and trustee for said children.

Declaration filed at the time of issuing this writ; judgment required at the return term.

O. F. BLEDSOE,
U. S. atty. for the n. d. of Mississippi.

Upon which said summons the marshal made the following return, to wit: Executed May 18th, 1843.

A. K. McCLUNG, *Marshal.*

Marshal's fees.

Levy, entering, and return, -	$4 50
2 copies, - - - - -	1 00
Mileage, - - - - -	4 00
	$9 50

At the time of issuing said summons the plaintiff, by attorney, filed his certain declaration in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District court, for the northern district of Mississippi:
June term, A. D. 1843.

John Tyler, who is a citizen of Virginia, President of the United

States, and successor in office of Martin Van Buren, and trustee for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, by attorney, complains of Thomas G. Blewett, John Huddleston, and John H. Hand, citizens of the State of Mississippi, being in the custody of the marshal, &c., of a plea that they render unto him the sum of thirty-four hundred and fifty dollars which to him they owe, and from him unjustly detain; for that whereas the said defendants by the way and style of Thos. G. Blewett, Jno. Huddleston, and J. H. Hand, heretofore, to wit, on the 28th day of May, A. D. 1838, at, to wit, in the district aforesaid, by their certain writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledged themselves to be held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the sum of three hundred dollars, to be paid to the said Martin Van Buren, President as aforesaid, and his successors in office, in good and lawful money of the United States; and the said plaintiff avers that he is President of the United States, and a successor in office of Martin Van Buren, which said writing obligatory was and is subject to a condition thereunder written, to wit, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands had and held in the town of Columbus, became and was the purchaser of northwest quarter of section thirty-two, township twenty-three, range eight east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, Jno. Huddleston, and Jno. H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit, one note dated 28th day of May, 1838, and due 28th day of May, 1840, for two hundred and fourteen dollars and twenty-six cents; one other note of same date and amount, due 28th day of May, 1842; and one other note of the same date and amount, due the 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date at the rate of six per cent. per annum. Now, if said Thomas G. Blewett shall pay or cause to be paid interest at the rate of six per centum per annum on said several notes at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding, as by the said writing obligatory and the condition thereof will more fully and at large appear. And whereas also said defendants, by way and style of Thos. G. Blewett, Jno. Huddleston, and J. H. Hand, heretofore, to wit, on the 6th day of June, A. D. 1838, at, to wit, in the district aforesaid, by their certain writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain

judgment will be given against them by default; and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Missis-
[L. S.] sippi, at Pontotoc, the first Monday of December, A. D. 1842, and the 67th year of the independence of the United States. Issued 11th of May, 1843.

G. M. RAGSDALE, *Clerk.*

Which said summons is endorsed in the words and figures following, to wit:

This is an action of debt, and is founded on ten writings obligatory, made payable to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the nineteenth article of the treaty with the Choctaws, of September, 1830; six of said writings obligatory are dated the 28th day of May, A. D. 1838, and the other four the sixth day of June, A. D. 1838; four of the writings obligatory dated 28th day of May, A. D. 1838, are each for the sum three hundred dollars; another of said writings obligatory, dated 28th day of May, A. D. 1838, is for the sum of six hundred dollars; and the other, dated as last aforesaid, is for the sum of two hundred and fifty dollars; two of the writings obligatory, dated the 6th day of June, A. D. 1838, are for the sum of three hundred dollars each; another, dated as last aforesaid, is for the sum of three hundred and fifty dollars; and the others, dated sixth day of June, A. D. 1838, is for the sum of four hundred and fifty dollars; which said sum of money, and interest, is demanded in this action. Plaintiff sues as successor in office of Martin Van Buren, and trustee for said children.

Declaration filed at the time of issuing this writ; judgment required at the return term.

O. F. BLEDSOE,
U. S. atty. for the n. d. of Mississippi.

Upon which said summons the marshal made the following return, to wit: Executed May 18th, 1843.

A. K. McCLUNG, *Marshal.*

Marshal's fees.

Levy, entering, and return, -	$4 50
2 copies, - - - - -	1 00
Mileage, - - - - -	4 00
	$9 50

At the time of issuing said summons the plaintiff, by attorney, filed his certain declaration in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District court, for the northern district of Mississippi:
June term, A. D. 1843.

John Tyler, who is a citizen of Virginia, President of the United

States, and successor in office of Martin Van Buren, and trustee for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, by attorney, complains of Thomas G. Blewett, John Huddleston, and John H. Hand, citizens of the State of Mississippi, being in the custody of the marshal, &c., of a plea that they render unto him the sum of thirty-four hundred and fifty dollars which to him they owe, and from him unjustly detain; for that whereas the said defendants by the way and style of Thos. G. Blewett, Jno. Huddleston, and J. H. Hand, heretofore, to wit, on the 28th day of May, A. D. 1838, at, to wit, in the district aforesaid, by their certain writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledged themselves to be held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the sum of three hundred dollars, to be paid to the said Martin Van Buren, President as aforesaid, and his successors in office, in good and lawful money of the United States; and the said plaintiff avers that he is President of the United States, and a successor in office of Martin Van Buren, which said writing obligatory was and is subject to a condition thereunder written, to wit, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands had and held in the town of Columbus, became and was the purchaser of northwest quarter of section thirty-two, township twenty-three, range eight east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, Jno. Huddleston, and Jno. H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit, one note dated 28th day of May, 1838, and due 28th day of May, 1840, for two hundred and fourteen dollars and twenty-six cents; one other note of same date and amount, due 28th day of May, 1842; and one other note of the same date and amount, due the 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date at the rate of six per cent. per annum. Now, if said Thomas G. Blewett shall pay or cause to be paid interest at the rate of six per centum per annum on said several notes at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding, as by the said writing obligatory and the condition thereof will more fully and at large appear. And whereas also said defendants, by way and style of Thos. G. Blewett, Jno. Huddleston, and J. H. Hand, heretofore, to wit, on the 6th day of June, A. D. 1838, at, to wit, in the district aforesaid, by their certain writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain

day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledge themselves to be held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the sum of three hundred and fifty dollars, to be paid to the said Martin Van Buren, President as aforesaid, and his successors in office, in good and lawful money of the United States; and the said plaintiff avers that he is President of the United States, and a successor in office, of Martin Van Buren; which said writing obligatory was and is subject to a condition thereunder written, (to wit,) that whereas the said Thomas G. Blewett, on the 6th day of June, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Chocchuma, became and was purchaser of southwest quarter of section twenty-three, township twenty-five, range two east, for which the said Thomas G. Blewett has executed his three several notes, with Thomas McGee, John Huddleston, and John H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit, one note dated 6th day of June, 1838, and due the 6th day of June, 1840, for one hundred and eighty-five dollars and thirty-two cents; one other note of the same date and amount, due 6th day of June, 1842; and one other note of the same date and amount, due 6th day of June, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest at the rate of six per centum per annum on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs in Washington city, then this obligation to be void, otherwise to be good and binding, as by the said writing obligatory, and the condition thereof, will more fully and at large appear. And whereas, also, the said defendants, by the way and style of Thos. G. Blewett, Jno. Huddleston, J. H. Hand, heretofore, to wit, on the 28th day of June, A. D. 1838, at, to wit, in the district aforesaid, by their certain writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledged themselves to be held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children, provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the sum of three hundred dollars, to be paid to the said Martin Van Buren, President as aforesaid, and his successors in office, in good and lawful money of the United States; and the said plaintiff avers that he is President of the United States, and successor in office of Martin Van Buren; which said writing obligatory was and is subject to a condition thereunder written, to wit, that whereas the said Thomas G. Blewett, on the 28th

day of May, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Columbus, became and was the purchaser of northeast quarter of section thirty-three, township twenty-three, range eight, east; for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, John Huddleston, and John H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit, one note dated the 28th day of May, 1838, and due 28th day of May, 1840, for two hundred and fourteen dollars and two cents; one other note of same date and amount, due 28th day of May, 1842; one other note of same date and amount, due 28th day of May, 1844; all of said several bonds or notes, by the terms of said purchase, are to bear interest from their dates at the rate of six per cent. per annum. Now, if the said Thomas G. Blewett shall pay, or cause to be paid, interest at the rate of six per centum per annum on said several notes at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs in Washington city, then this obligation to be void, otherwise to be good and binding, as by the said writing obligatory, and the condition thereof, will more fully and at large appear.

For that, whereas said defendants, by the way and style of Thos. G. Blewett, Jno. Huddleston, and J. H. Hand, heretofore, to wit, on the 28th day of May, A. D. 1838, at, to wit, in the district aforesaid, by their certain writings obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledged themselves to be held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the sum of three hundred dollars above demanded to be paid to the said Martin Van Buren, President as aforesaid, and his successors in office, in good and lawful money of the United States; and the said plaintiff avers, that he is President of the United States, and successor in office of Martin Van Buren; which said writing obligatory was and is subject to a condition thereunder written, to wit, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Columbus, became and was the purchaser of southeast quarter of section thirty-three, township twenty-three, range eight east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, Jno. Huddleston, and Jno. H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: one note dated 28th day of May, 1838, and due 28th day of May, 1840, for two hundred and fourteen dollars and two cents; one other note, of same date and amount, due 28th day of May, 1842; and

one other note, of same date and amount, due 28th day of May, 1844. All of said several bonds or notes, by terms of said purchase, are to bear interest from their date at the rate of six per cent. per annum. Now, if the said Thomas G. Blewett shall pay, or cause to be paid, interest at the rate of six per centum per annum on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding, as by the said writing obligatory and the condition thereof will more fully and at large appear. And whereas, also, the said defendants, by the way and style of Thos. G. Blewett, Jas. Huddleston, and J. H. Hand, heretofore, to wit, on the 28th day of May, A. D. 1838, at, to wit, in the district aforesaid, by their certain writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledge themselves to be held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the sum of six hundred dollars, to be paid to the said Martin Van Buren, President as aforesaid, and his sucessors in office, in good and lawful money of the United States; and the said plaintiff avers, that he is President of the United States, and a successor in office of Martin Van Buren; which said writing obligatory was and is subject to a condition thereunder written, to wit, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands had and held in the town of Columbus, became and was the purchaser of northwest quarter of section twenty-two, township nineteen, range seventeen, E., for which the said Thomas G. Blewett has executed his three several notes, with , his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: one note, dated 28th day of May, 1838, and due 28th day of May, 1840, for five hundred and thirty-three dollars ninety-two cents; one other note, of same date and amount, due 28th day of May, 1842; and one other note, of same date and amount, due 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest at the rate of six per centum per annum on said several notes at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian affairs, in Washington city, then this obligation to be void, otherwise to be good and binding, as by the said writing obligatory, and the condition thereof, will more fully and at large appear.

And whereas, also, said defendants, by the way and style of Thos.

G. Blewett, Jno. Huddleston, and J. H. Hand, heretofore, to wit, on the 6th day of June, A. D. 1838, at, to wit, in the district aforesaid, by their certain writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledged themselves to be held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the sum of three hundred dollars, to be paid to the said Martin Van Buren, President as aforesaid, and his successors in office, in good and lawful money of the United States; and the said plaintiff avers that he is President of the United States, and a successor in office of Martin Van Buren; which said writing obligatory was, and is, subject to a condition thereunder written, to wit, that whereas the said Thomas G. Blewett, on the 6th day of June, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Chocchuma, became and was the purchaser of southwest quarter of section twenty-two, township twenty-four, range two east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, John Huddleston, and John H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: one note dated the 6th day of June, 1838, and due 6th day of June, 1840, for one hundred and eighty dollars; one other note, of same date and amount, due 6th day of June, 1842; and one other note, of same date and amount, due 6th day of June, 1844; all of several bonds or notes, by the terms of said purchase, are to bear interest, from their date, at the rate of six per cent. per annum. Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest at the rate of six per centum per annum on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the commissioner of Indian affairs, in Washington city, then this obligation to be void, otherwise to be good and binding, as by the writing obligatory and the condition thereof will more fully and at large appear.

And whereas, also, said defendants, by the way and style of Thos. G. Blewett, Jno. Huddleston, and J. H. Hand, heretofore, to wit, on the 28th day of May, A. D. 1838, at, to wit, in the district aforesaid, by their certain writings obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledge themselves to be held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the sum of three hundred dollars, to be paid to the said Martin Van Buren, President as aforesaid, and his successors in office, in good and lawful money of the

United States; and the said plaintiff avers that he is President of the United States, and a successor in office of Martin Van Buren; which said writing obligatory was and is subject to a condition thereunder written; to wit, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Columbus, became, and was, the purchaser of southeast quarter of section twenty-nine, township twenty-three, range eight, east, for which the said Thomas G. Blewett has executed his three several notes, with Thomas McGee, Jno. Huddleston, and Jno. H. Hand his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children, provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: one note, dated 28th day of May, 1838, and due 28th day of May, 1840, for two hundred and fourteen dollars sixty-one cents; one other note, of same date and amount, due the 28th day of May, 1842; and one other note, of same date amount, due 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date at the rate of six per cent. per annum. Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest, at the rate of six per centum per annum, on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding, as by the said writing obligatory and the condition thereof, will more fully and at large appear.

And whereas, also, said defendants, by the way and style of Thos. G. Blewett, Jno. Huddleston, and J. H. Hand, heretofore, to wit, on the 6th day of June, A. D. 1838, at, to wit, in the district aforesaid, by their certain other writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledged themselves to be held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the sum of four hundred and fifty dollars, to be paid to the said Martin Van Buren, President as aforesaid, and his successors in office, in good and lawful money of the United States; and the said plaintiff avers, that he is President of the United States, and a successor in office of Martin Van Buren; which said writing obligatory was and is subject to a condition thereunder written, to wit, that whereas the said Thos. G. Blewett, on the 6th day of June, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Chocchuma, became and was the purchaser of northwest quarter of section ten, township twenty-four, range two, east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, Jno. Huddleston, and Jno. H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the

19th article of the treaty with the Choctaws of September, 1830, to wit: one note, dated 6th day of June, 1838, and due 6th day of June, 1840, for two hundred and seventy dollars and eight cents; one other note, of same date and amount, due 6th day of June, 1842, and one other note, of same date and amount, due 6th day of June, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest, at the rate of six per centum per annum on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding, as by said writing obligatory, and the condition thereof, will more fully and at large appear.

And whereas, also, the said defendants, by the way and style of Thos. G. Blewett, Jno. Huddleston, and J. H. Hand, heretofore, to wit, on the 6th day of June, A. D. 1838, at, to wit, in the district aforesaid, by their certain other writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledged themselves to be held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the sum of three hundred dollars, to be paid to the said Martin Van Buren, President as aforesaid, and his successors in office, in good and lawful money of the United States. And the said plaintiff avers that he is President of the United States, and a successor in office of Martin Van Buren; which said writing obligatory was and is subject to a condition thereunder written, to wit, that, whereas, the said Thomas G. Blewett, on the 6th day of June, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Chocchuma, became and was the purchaser of southeast quarter of section twenty-eight, township twenty-five, range two east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, John Huddleston, and John H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: one note, dated 6th day of June, 1838, and due 6th day of June, 1840, for one hundred and sixty dollars and thirty-five cents; one other note of same date and amount, and due 6th day of June, 1842; and one other note of same date and amount, due 6th day of June, 1844. All of said several bonds or notes by the terms of said purchase are to bear interest from their date, at the rate of six per cent. per annum. Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest at the rate of six per centum per annum on said several notes at the expiration of each and every year from the date of the same, in good and lawful

money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding, as by the said writing obligatory, and the condition thereof, will more fully and at large appear.

And whereas, also, the said defendants, by the way and style of Thos. G. Blewett, Jno. Huddleston, and J. H. Hand, heretofore, to wit, on the 28th day of May, 1838, at, to wit, in the district aforesaid, by their certain writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledged themselves to be held and finly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws, of September, 1830, in the sum of two hundred and fifty dollars, to be paid to the said Martin Van Buren, President as aforesaid, and his successors in office, in good and lawful money of the United States. And the said plaintiff avers that he is President of the United States, and a successor in office of Martin Van Buren; which said writing obligatory was and is subject to a condition thereunder written, to wit, that, whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Columbus, became, and was, the purchaser of northwest quarter of section thirty-four, township twenty-three, range eight east, for which the said Thomas G. Blewett has executed his three several notes, with Thomas McGee, Jno. Huddleston, and Jno. H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: one note, dated 28th day of May, 1838, and due 28th day of May, 1840, for one hundred and sixty dollars and twenty-eight cents; one other note of same date and amount, due 28th day of May, 1842; and one other note of same date and amount, due 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date, at the rate of six per cent. per annum. Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest, at the rate of six per centum per annum, on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding, as by the said writing obligatory, and the condition thereof, will more fully and at large appear.

Nevertheless, the said plaintiff in fact sayeth, that the said Thomas G. Blewett hath not paid, or caused to be paid, interest, at the rate of six per centum per annum on said several notes in said several writing obligatory specified, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city,

contrary to the form and effect of the said several writings obligatory, and of the said several conditions thereof; by reason of which said several breaches the said writings obligatory became forfeited, and whereby an action hath accrued to the said plaintiff, as trustee as aforesaid, to demand and have, of and from the said defendants, the said sum of thirty-four hundred and fifty-four dollars above demanded. Yet, the said defendants, although often requested so to do, hath not, as yet, paid the said sum of money demanded, or any part thereof, to the said plaintiff or others, but to pay the same, or any part thereof, hath hitherto wholly neglected and refused, and still neglect and refuse so to do, to the damage of the said plaintiff, as trustee as aforesaid, one thousand dollars; and therefore he sues.

O. F. BLEDSOE,
U. S. att'y.

Defendants' demurrer to plaintiff's declaration filed June the 17th, 1843, in the words and figures following, to wit:

" United States of America, district court of the United States, for the northern district of Mississippi.

JOHN H. HAND, John Huddleston, and Thomas G. Blewett, als.
JOHN TYLER, President of the United States, and successor of Martin Van Buren, who sues for the use as trustee of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830.

And said defendants, by attorney, come and defend the wrong and injury, when, &c., and say that the plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the declaration and matter therein contained are insufficient in law for the plaintiff to maintain his aforesaid action thereof against them, and that they are not bound by law to answer the same, and this they are ready to verify; wherefore, they pray judgment, and that the plaintiff be barred from having or maintaining his aforesaid action thereof against them, and according to the statute they state and show the following causes of demurrer, viz:

1st. That there is no sufficient averment in the proceedings or record showing the citizenship or place of abode of the plaintiff, or that he is by reason of the nature of his place of abode and citizenship entitled by law to maintain said suit.

2d. That the plaintiff shows no title to the bonds or obligations sued on, nor such an interest in the suit *a* will authorize him to maintain the same.

3d. That the parties for whose use the suit is brought, (who by the laws of Mississippi are the real plaintiffs and responsible for costs,) are not named in the record.

4th. That said bonds sued on were taken without authority of law, the said Martin Van Buren, President of the United States, having no such delegated power, and having no right to make the same payable to himself and his successors in office, or to assume to himself or his successors in office a legal perpetuity and succession unknown to the said office and not given by law.

5th. That said bonds in the declaration mentioned appear, from the face of the pleadings to have been given without any actual consideration, and by virtue of an assumption of authority on the part of said Martin Van Buren to dispose of said orphan Indian lands at public sale without any legal right to sell the same. And because the said declaration is in other respects informal and insufficient.

HARRIS & HARRISON,
And A. Y. SMITH,
Att'ys for defendants."

Afterwards, to wit, on the 17th day of June, being a day of the June term of said court, 1843, the following proceedings were had in the foregoing cause, to wit:

Saturday, June 17th, 1843.

"Submitted on demurrer."

JOHN TYLER, President, use, &c.,
vs.
HAND, Huddleston, and Blewett.

Copy of joinder in demurrer.

District court for the northern district of Mississippi.

JOHN TYLER, President, &c., use, &c.,
vs.
JOHN H. HAND, JOHN HUDDLESTON, & THOMAS G. BLEWETT.

And the said plaintiff saith, that the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against the said defendant; and the said plaintiff is ready to verify and prove the same, as the court here shall direct and award; whereof, in as much as the defendants aforesaid have not answered the said declaration, nor hitherto, in any manner, denied the same, the said plaintiff prays judgment and his damages, by reason of the unjust detention of said debt in the said declaration mentioned, to be adjudged to him, &c.

O. F. BLEDSOE,
U. S. atty. for the n. dist. of Mississippi.

The undersigned, attorneys in the above stated case, do hereby agree that the above joinder in demurrer may be filed, with the papers in said cause, as part of the pleadings in said cause, in the same manner as if filed at the regular and proper term of the court. And we further agree,

that it shall constitute a part of the transcript of the record in said cause, as if originally filed. And we *wave* all informalities, in the transcript of the record in said cause, growing out of the omission to file said joinder in demurrer at the regular term of said court.

Dec. 5th, 1846.

HARRIS & HARRISON,
Attorney for defendants.
O. F. BLEDSOE,
U. S. atty. for the n. dist. of Mississippi.

THE UNITED STATES OF AMERICA,
Northern district of Mississippi.

I, G. M. Ragsdale, clerk of the district court of the United States, for the northern district of Mississippi, certify the foregoing to be a full, true, and complete copy of the joinder in demurrer and agreement, in the above stated case, as the same appears on file in my office.

Given under my hand, and the seal of said court, at office, in Pontotoc, this the 5th day of December, A. D. 1846.

[SEAL.] G. M. RAGSDALE, *Clerk.*

At the December term, 1843, of said court, and June term, 1844, there were no proceedings had by the court in the aforesaid cause.

Afterwards, to wit, on the 5th day of December, 1844, being a day of the December term of said court, the further proceedings were had in the foregoing cause, to wit:

Thursday, December the 5th, 1844.

JOHN TYLER, President of the U. S., and successor of Martin Van Buren, for the use of orphan children of the Choctaw nation,
vs.
HAND, HUDDLESTON, and BLEWETT.

This day came the parties, by their attorneys, and thereupon came on to be heard defendants' demurrer to plaintiff's declaration, and, after argument, it is considered by the court that the same be sustained.

Agreement.

United States district court, at Pontotoc, Mississippi.

JOHN TYLER, President, &c., use, &c.,
vs.
HAND, HUDDLESTON, and BLEWETT.

It is agreed, in this case, that the clerk certify to the record as it is, leaving one or two blank leaves at the conclusion, so that the attorneys can, by consent and agreement, complete the same here, if any thing is wanting. All formality, notice, &c., will be waived here, and evidence be placed on the record, before we send it up.

HARRIS & HARRISON, *Atto's for def'ts.*
O. F. BLEDSOE, *U. S. att'y.*

UNITED STATES OF AMERICA,
Northern district of Mississippi:

I, G. M. Ragsdale, clerk of the district court of the northern district of Mississippi, certify the above and foregoing to be a full transcript of the record in the aforesaid cause as agreed upon between the parties, and that the bonds hereto annexed are correct copies of the bonds sued on, all of which appear of record and on file in my office. And also that true copies of the writ of error and citation, herewith filed, remain in my office.

Given under my hand, and the seal of said court, at office, in [SEAL.] Pontotoc, this, the 5th day of October, A. D. 1846.

G. M. RAGSDALE, *Clerk.*

Know all men by these presents, that we, Thomas G. Blewett, Thos. McGee, Jno. Huddleston, and Jno. Hand, are held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the penal sum of three hundred dollars and cents, good and lawful money of the United States. For which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Columbus, became and was the purchaser of northwest quarter of section thirty-two, township twenty-three, range eight east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, Jno. Huddleston, and Jno. H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: One note, dated 28th day of May, 1838, and due 28th day of May, 1840, for two hundred and fourteen dollars and twenty-six cents; one other note, of same date and amount, due the 28th day of May, 1842; and one other note, of the same date and amount, due the 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest, from their date, at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest at the rate of six per centum per annum on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian affairs, in Washington city, then this obligation to be void, otherwise to be good and binding.

Witness our hands and seals this 28th day of May, 1838.

THOS. G. BLEWETT, [L. S.]
THO. McGEE, [L. S.]
JNO. HUDDLESTON, [L. S.]
J. H. HAND. [L. S.]

Know all men by these presents, that we, Thomas G. Blewett, Thomas McGee, John Huddleston, and John H. Hand, are held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the penal sum of three hundred and fifty dollars and cents, good and lawful money of the United States. For which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the said Thomas G. Blewett, on the 6th day of June, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Chocchuma, became and was the purchaser of southwest quarter of section twenty-three, township twenty-five, range two east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, John Huddleston, and John H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: One note, dated 6th day of June, 1838, and due 6th day of June, 1840, for one hundred and eighty-five dollars and thirty-two cents; one other note, of same date and amount, due the 6th day of June, 1842; and one other note, of the same date and amount, due the 6th day of June, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest, from their date, at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest at the rate of six per centum per annum on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding.

Witness our hands and seals this 6th day of June, 1838.

THOS. G. BLEWETT, [L. S.]
THO. McGEE, [L. S.]
JNO. HUDDLESTON, [L. S.]
J. H. HAND. [L. S.]

Know all men by these presents, that we, Thomas G. Blewett, Thos. McGee, Jno. Huddleston, and Jno. H. Hand, are held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the penal sum of three hundred dollars and cents, good and lawful money of the United States. For which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Columbus, became and was the purchaser of northeast quarter of section thirty-three, township twenty-three, range eight east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, Jno. Huddleston, and Jno. H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: One note, dated 28th day of May, 1838, and due 28th day of May, 1840, for two hundred and fourteen dollars and two cents; one other note, of same date and amount, due the 28th day of May, 1842; and one other note, of the same date and amount, due the 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest, from their date, at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest at the rate of six per centum per annum, on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding.

Witness our hands and seals this 28th day of May, 1838.

THOS. J. BLEWETT, [L. S.]
THO. McGEE, [L. S.]
JNO. HUDDLESTON, [L. S.]
J. H. HAND. [L. S.]

Know all men by these presents, that we, Thomas G. Blewett, Thomas McGee, John Huddleston, and John H. Hand, are held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the penal sum of three hundred dollars and cents, good and lawful money of the United States. For which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Columbus, became and was the purchaser of southeast quarter of section thirty-three, township twenty-three, range eight east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, John Huddleston, and John H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: One note, dated 28th day of May, 1838, and due 28th day of May, 1840, for two hundred fourteen

dollars and two cents; one other note of same date and amount, due the 28th day of May, 1842; and one other note of the same date and amount, due the 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date, at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest, at the rate of six per centum per annum, on said several notes, at the expiration of each and every year, from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding.

Witness our hands and seals, this 28th day of May, 1838.

THOMAS G. BLEWETT, [L. S.]
THOMAS McGEE, [L. S.]
JOHN HUDDLESTON, [L. S.]
J. H. HAND. [L. S.]

Know all men by these presents, that *we*, Thomas G. Blewett, are held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the penal sum of six hundred dollars and cents, good and lawful money of the United States. For which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Columbus, became and was the purchaser of northwest quarter of section twenty-two, township nineteen, range seve nteen east, for which the said Thomas G. Blewett has executed his three several notes with and , his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: One note, dated 28th day of May, 1838, and due 28th day of May, 1840, for five hundred and thirty-three dollars and ninety-two cents; one other note of same date and amount, due the 28th day of May, 1842; and one other note of the same date and amount, due the 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date, at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest, at the rate of six per centum per annum, on said several notes, at the expiration of each and every year, from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding.

Witness our hands and seals, this 28th day of May, 1838.

THOMAS G. BLEWETT, [L. S.]
THOMAS McGEE, [L. S.]
JOHN HUDDLESTON, [L. S.]
J. H. HAND. [L. S.]

Know all men by these presents, that we, Thomas G. Blewett, Thomas McGee, John Huddleston, and John H. Hand, are held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the penal sum of three hundred dollars and cents, good and lawful money of the United States. For which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the said Thomas G. Blewett, on the 6th day of June, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Chocchuma, became and was the purchaser of southwest quarter of section twenty-two, township twenty-four, range two east, for which the said Thomas G. Blewett, has executed his three several notes, with Thomas McGee, John Huddleston, and John H. Hand, his security, to *Martin Van Buren*, President of the United States, for the use of the Choctaw orphan children, provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: one note, dated 6th day of June, 1838, and due 6th day of June, 1840, for one hundred and eighty-seven dollars and cents; one other note of same date and amount, due the 6th day of June, 1842; and one other note of the same date and amount, due the 6th day of June, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay or cause to be paid, interest at the rate of six per centum per annum, on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding.

Witness our hands and seals this 6th day of June, 1838.

THOMAS G. BLEWETT, [L. S.]
THOMAS McGEE, [L. S.]
JOHN HUDDLESTON, [L. S.]
J. H. HAND. [L. S.]

Know all men by these presents, that we, Thomas G. Blewett, Thomas McGee, John Huddleston, and John H. Hand, are held and firmly bound to Martin Van Buren, President of the United States, and his

successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, in the penal sum of three hundred dollars and cents, good and lawful money of the United States. For which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of , became and was the purchaser of southeast quarter of section twenty-nine, township twenty-three, range eight east, for which the said Thomas G. Blewett has executed his three several notes, with Thomas McGee, John Huddleston, and John H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws of September, 1830, to wit: One note, dated 28th day of May, 1838, and due 28th day of May, 1840, for two hundred and fourteen dollars and sixty-one cents; one other note, of same date and amount, due the 28th day of May, 1842; and one other note, of the same date and amount, due the 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date, at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest, at the rate of six per centum per annum, on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding.

Witness our hands and seals, this 28th day of May, 1838.

THOMAS G. BLEWETT, [L. S.]
THOMAS McGEE, [L. S.]
JOHN HUDDLESTON, [L. S.]
J. H. HAND. [L. S.]

Know all men by these presents, that we, Thomas G. Blewett, Thomas McGee, John Huddleston, and John H. Hand, are held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws, of September, 1830, in the penal sum of four hundred and fifty dollars and cents, good and lawful money of the United States. For which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the said Thomas G. Blewett, on the 6th day of June, 1838, at a public sale of

the Choctaw orphan lands, had and held in the town of Chocchuma, became and was the purchaser of northwest quarter of section ten, township twenty-four, range two east, for which the said Thomas G. Blewett has executed his three several notes, with Thomas McGee, John Huddleston, and John H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws, of September, 1830, to wit: One note, dated 6th day of June, 1838, and due 6th day of June, 1840, for two hundred and seventy dollars and eight cents; one other note, of same date and amount, due the 6th day of June, 1842; and one other note, of the same date and amount, due the 6th day of June, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date, at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest, at the rate of six per centum per annum, on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding.

Witness our hands and seals, this 6th day of June, 1838.

THOMAS G. BLEWETT, [L. S.]
THOMAS McGEE, [L. S.]
JOHN HUDDLESTON, [L. S.]
J. H. HAND. [L. S.]

Know all men by these presents, that we, Thomas G. Blewett, Thomas McGee, John Huddleston, and John H. Hand, are held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws, of September, 1830, in the penal sum of three hundred dollars and cents, good and lawful money of the United States. For which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the said Thomas G. Blewett, on the 6th day of June, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Chocchuma, became and was the purchaser of southeast quarter of section twenty-eight, township twenty-five, range two east, for which the said Thomas G. Blewett has executed his three several notes, with Thomas McGee, John Huddleston, and John H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws, of September, 1830, to wit: One note, dated 6th day of June, 1838, and due 6th day of June, 1840, for one hundred and sixty dol-

lars and thirty-five cents; one other note, of same date and amount, due the 6th day of June, 1842; and one other note, of the same date and amount, due the 6th day of June, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date, at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest, at the rate of six per centum per annum, on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding.

Witness our hands and seals, this 6th day of June, 1838.

THOMAS G. BLEWETT, [L. S.]
THOMAS McGEE, [L. S.]
JOHN HUDDLESTON, [L. S.]
J. H. HAND. [L. S.]

Know all men by these presents, that we, Thomas G. Blewett, Thos. McGee, Jno. Huddleston, Jno. H. Hand, are held and firmly bound to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the 19th article of the treaty with the Choctaws, of September, 1830, in the penal sum of two hundred and fifty dollars and cents, good and lawful money of the United States. For which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands, had and held in the town of Columbus, became and was the purchaser of northwest quarter of section thirty-four, township twenty-three, range eight, east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, Jno. Huddleston, and Jno. H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the 19th article of the treaty with the Choctaws, of September, 1830, to wit: One note, dated 28th day of May, 1838, and due 28th day of May, 1840, for one hundred and sixty dollars and twenty-eight cents; one other note of same date and amount, due the 28th day of May, 1842; and one other note of the same date and amount, due the 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date, at the rate of six per cent. per annum.

Now, if said Thomas G. Blewett shall pay, or cause to be paid, interest at the rate of six per centum per annum on said several notes, at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Com-

missioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding.

Witness our hands and seals, this 28th day of May, 1838.

THOS. G. BLEWETT, [L. S.]
THOS. McGEE, [L. S.]
JNO. HUDDLESTON, [L. S.]
J. H. HAND. [L. S.]

Filed January 4, 1847.

1886.

SUPREME COURT OF THE UNITED STATES.

No. 164.

PLINY CUTLER, APPELLANT,

vs.

WILLIAM A. RAE.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MASSACHUSETTS.

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J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA,
[L. S.] *Massachusetts district:*

At a circuit court of the United States, for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Thursday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-six. Before the honorable Levi Woodbury, associate justice, Peleg Sprague, district judge.

Pliny Cutler, respondent and appellant, from a decree of the district court of the United States, specially holden at Boston, within and for the district of Massachusetts, by adjournment on the ninth day of May, A. D. 1846, in which said court William A. Rea was libellant, versus Pliny Cutler, respondent.

The proceedings in the court below were as follows, to wit:

UNITED STATES OF AMERICA,
Massachusetts district, ss:

At a special district court of the United States, holden by adjournment at Boston, within and for the district of Massachusetts, on Saturday, the ninth day of May, A. D. 1846.

Before the honorable Peleg Sprague, judge, William A. Rea, libellant, versus Pliny Cutler, respondent.

The libel in this case was filed in the clerk's office on the twenty-sixth day of January, A. D. 1846, and is as follows, viz:

To the honorable Peleg Sprague, judge of the United States district court for the district of Massachusetts.

The libel and complaint of William A. Rea, of the city of Boston, in said district, merchant, against Pliny Cutler, of said Boston, merchant, in a cause of contribution or general average, civil and maritime.

And thereupon this libellant alleges and propounds as follows:

First. That on the sixth day of November last this libellant was the owner of a certain barque or vessel called the Zamora, and continued to be the owner thereof up to the time of the loss and wrecking of said vessel hereinafter described.

Second. That previously to said sixth day of November the said vessel was lying at New Orleans, in the State of Louisiana, and there was loaded on board thereof an assorted cargo, to be transported therein, and delivered at Boston, the perils of the seas excepted; and, among other things, one hundred and fifty-four bales of cotton of great value, to wit, to the value of fifty-four hundred dollars, to be delivered to the said Cutler, at the said Boston, on payment of freight and charges, the perils of the seas excepted, as will appear by reference to one of the bills of lading thereof, which being in the possession of the said Cutler, this libellant prays that he may be held to produce.

Third. That on said sixth day of November said vessel set sail from

said New Orleans with said cargo and cotton on board, bound for said Boston; that on the passage nothing material occurred until the fifteenth day of December last past, when said vessel was in Massachusetts bay during a violent gale; at six o'clock P. M. made Scituate light, wore ship, and stood to the eastward under reefed maintopsail and main spencer; at ten P. M., made Plymouth light; at two A. M., tried to wear ship, but being unable to do so, and the wind forcing the vessel towards the shore, both anchors, with long ranges of chain cable attached, were let go. At six and thirty min. A. M., on the sixteenth day of said December, the vessel was nevertheless drifted towards the shore by the force and violence of the wind, notwithstanding said cables and anchors, and the master thereof foreseeing that she would be driven on shore stern foremast, and that the vessel and cargo and the lives of those on board were in imminent danger of being totally lost, for the preservation thereof, in whole or in part, deemed it expedient to slip the cables and to run said vessel on shore in some safer and more convenient place.

Fourth. That thereupon the said master ordered the cables to be slipped, and the foresail and foretopmast staysail to be hoisted, for the purpose of running said vessel on shore, which was done, and the head of said vessel got towards the land, and the said vessel was run along the shore for some distance in order to find the best place to beach her; that about 7 30′ A. M., the vessel struck, and the main mast was then cut away, and the yards trimmed so as to direct her course towards a place which appeared more smooth than the rest of the coast, and she was then run bows on as far as she would go, it being then about low water; that as the tide rose the vessel thumped violently, and it was deemed expedient for the benefit of all concerned, to cut away the fore and main masts, which was accordingly done, and the vessel continued to drive up until within about three hundred feet of high water mark.

Fifth. That by reason of the premises, the said vessel has been wrecked and rendered of no value, and that the libellant has suffered great loss and damage, to wit, to the amount of twenty thousand dollars being the value of the said vessel, and of twenty hundred dollars, being the value of the freight thereof.

Sixth. That by reason of the premises and of the intentional stranding of said vessel, the cargo thereof, and among other things the said one hundred and fifty bales, were saved, when in imminent danger of being totally lost, and the said Cutler has saved the value thereof, to wit, the sum of fifty-four hundred dollars.

Seventh. That by reason of the premises and the sacrifice of the vessel for the general interest, this libellant is entitled to a contribution from the owners of the cargo thereof, and the said Cutler, to indemnify him for the loss he has sustained of said vessel and freight, and that the sum which the said Cutler ought to pay to this libellant on account thereof is the sum of three thousand dollars; but the said Cutler, though requested, has not paid the same, and the same now remains due to the damage of this libellant in the sum of four thousand dollars.

Eighth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; in verification whereof, if denied, this libellant prays leave to refer to the depositions and other proofs to be by him exhibited.

Whereupon this libellant prays that process in due form of law may issue against the said Pliny Cutler, and that he may be required to answer all and singular the matters so articulately propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid, and for such other relief as to law and justice shall appertain, and to condemn the said Pliny Cutler in costs.

WILLIAM A. REA,
By F. C. LORING, *Proctor*.

Proctor F. C. LORING.

Whereupon, by order of the judge monition issued, commanding the marshal of said district to summon the said Pliny Cutler, of said Boston, merchant, (if he may be found in his precinct,) to appear before the district court of the United States, to be holden at Boston, within and for the Massachusetts district, on Friday, the thirtieth day of January, 1846, at ten o'clock, A. M., then and there to answer said libel; on which the marshal made return as follows, viz:

UNITED STATES OF AMERICA,
Mass. district, ss:

BOSTON, *January* 27, 1846.

Pursuant hereunto, I have summoned the within named Pliny Cutler, by leaving at his last and usual place of abode a true and attested copy of this summons, to appear as herein directed.

HENRY HARRIS,
U. S. Dep'ty Marshal.

Then personally appeared Pliny Cutler, of Boston, in the district of Massachusetts, and produced for surety Henry Davenport, of said Boston.

And the said Cutler and Davenport, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of two hundred dollars, unto the said William A Rea; that the said Cutler shall pay all costs and expenses which shall be awarded against him in this suit, upon the final adjudication thereof, or by any interlocutory order.

On the fifth day of March, A. D. 1846, the following answer of Pliny Cutler was filed in the clerk's office:

The answer of Pliny Cutler to the libel of William A. Rea.

This respondent, reserving to himself all benefit of exception to the said libel, for answer thereunto, says:

1st. He admits that the libellant was the owner of the barque Zamora, at the time of the disaster referred to; that the said vessel sailed from New Orleans on or about the sixth day of November last past, bound for Boston, having on board an assorted cargo, and among other

things one hundred and fifty-four bales of cotton, of the value of five thousand eight hundred and eight dollars $\frac{6}{100}$ or thereabouts, consigned and deliverable to this respondent, according to the bill of lading therefor, which this respondent annexes hereto.

2. This respondent has been informed, and believes it to be true, that the said vessel was wrecked near Plymouth, in Massachusetts bay, on or about the sixteenth day of December, now last past; and that so much of her cargo as was consigned to this respondent was taken by lighters or small vessels from said vessel while lying on the rocks; the said cotton being in a damaged state, having been injured by sea water in consequence of the bilging of the said vessel; but this respondent knows nothing of the navigation of the said vessel, or the acts done on board of her, before she was cast on the rocks; and does not admit the statements and allegations in relation thereto in said libel contained to be true, and so far as the same may be material, he prays that the libellant may be required to prove the same.

3. This respondent knows nothing of the amount of damage done to the said vessel.

4. This respondent is advised that the libellant has no legal claim on him for general average contribution, and therefore he denies that he is bound to pay the sum in the said libel mentioned, or any other sum on account thereof; submitting to this honorable court that such a claim is not valid, and denying that any acts were done on board said vessel which lawfully entitle the libellant to maintain any claim for general average contribution against this respondent.

5. That all and singular the premises are true; in verification whereof, if denied, the respondent craves leave to refer to the depositions, and other proofs to be by him exhibited in this cause.

Wherefore, this respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise right and justice to administer in the premises.

PLINY CUTLER.

March 5th, 1846, sworn to before me,

S. E. SPRAGUE, *Clerk*.

Depositions.

I, Albert A. Farnham, of Boston, of lawful age to testify, on oath depose and say, I was master of the barque Zamora, of Boston, on her late voyage from New Orleans to Boston, with an assorted cargo. We sailed from New Orleans on the sixth day of November; William A. Rea, of Boston, was the owner of the Zamora.

Interrogatories by F. C. Loring, esq., counsel for libellant, William A. Rea.

1st. Whether any thing material happened on the voyage before the 15th of December.

Ans. No, sir, nothing extraordinary.

2. Whether or not, on that day, you made Scituate light, and at what time? What was the weather then? Please to state particularly.

Ans. On the fifteenth, about six o'clock of the afternoon, we made Scituate light; the weather was quite stormy, and had been blowing very heavy; about the time of making the light the weather had cleared up partially, which enabled us to see it.

3. Whether or not did you then alter your course? How did you then stand, and what sail were you under?

Ans. We wore ship, and stood to the eastward under short sail, close reefed maintopsail, reefed foresail, and foretopmast staysail.

4. When did you make Plymouth light, what course did you then steer, and for how long? Whether did you afterwards try to wear ship, and with what success?

Ans. We made Plymouth light about ten o'clock in the evening; we still continued standing to the eastward till about two o'clock, and we endeavored to wear ship, but unsuccessfully.

5. What was the action of the wind on the vessel at that time, and how far off was the shore?

Ans. The wind was about northeast by north to north northeast, and variable, blowing heavy, with a high sea; from the variableness of the wind we continued to stand upon that course, in hopes of a change of wind; when we attempted to wear, I should say the shore was about four miles off.

6. Whether or not were the cables and anchors then let go? Please to state how much range there was to the cables, and whether they were of iron or hemp? Did you then take in sail?

Ans. Soon after this the cables and anchors were let go, and sixty fathoms of chain were paid out on each cable, which were iron; our sails were then furled.

7. Whether or not did you then, or previously, consult with your officers as to what course was most expedient? What danger, if any, was then anticipated, and why?

Ans. I consulted with the chief officer, as I had upon all the arrangements we should make, even to the slipping our cables; the fear the cables would not hold us was the danger anticipated.

8. Please to state what occurred after you came to anchor.

Ans. The anchors held us for about one hour, and then she began dragging them; we then gave her all the cable, about ten or fifteen fathoms more on each cable, and that again brought us up. We rode for some hour and a half with that cable; she then tripped her anchors once more, and continued dragging slowly to the shore. We discovered breakers astern of us at some distance; they were very heavy apparently, but further to the west we could see a place apparently more smooth, and being now too near the shore to have any further hesitation, and our anchors still coming home, we set our foresail and staysail, slipped the cables, wore slowly round, and steered as much to the westward as we possibly could to clear the heavy breakers. About seven o'clock in the morning we struck heavily on the rocks, and we continued the fore-

sail set to force her higher up upon the beach; a heavy breaker struck her stern, carried away the stern boat, and shook her whole stern frame; she still continued to force on; the rudder and rudder case were next torn away, and the water deluged the cabin. About this time the mizen mast was cut away, and the ship remained surging heavily on the rocks; she came broadside on. We now commenced heaving our deck load overboard; cleared away the long boat, and threw it overboard; found it was impossible to use her, as she immediately filled; she soon after broke her fasts and went ashore. Several people were seen on the beach, and they took the boat and hauled her up high on the rocks. There was now a thick snow storm, and the people increased on the beach, bringing with them a whale boat. They could not render us any assistance, but halloed; from the violence of the wind we could not understand them; and the men soon after became anxious, packed up their clothes, what they could get, and threw their chests overboard, and they were drawn ashore. The men wished to go ashore themselves; I told them generally it was best for them to remain on board, and probably we should soon have a favorable opportunity of getting all of us safely to the land; but about noon the men, commencing the work of getting on shore, got a bale of cotton overboard, and three of them got down upon it, but they fell overboard, and the coldness of the water prevented their making any efforts for themselves, and they were drowned within ten feet of the ship, nothing could be done to save them; at the same time the mate made an attempt to reach the shore by means of an oar, and he also was drowned; the remainder of the crew remained on board till the middle of the afternoon, when we succeeded in getting a line ashore, and then hauled the boat off, and succeeded all of us, by twos and threes, in reaching the shore in safety; that is all. We abandoned the ship there in the middle of the afternoon. Soon after the men were lost, we cut away the foremast and mainmast. The day after the wreck Captain Gifford came down and took possession of the vessel and cargo.

9. Please to describe the appearance of the shore, towards which the vessel was drifting when the cables were slipped.

Ans. It being in the night we could see only the outline of the shore. We judged it to be one hundred feet above the sea; the breakers we could see very perceptibly.

10. If the cables had not been slipped, what would have been, in your judgment, the fate of the vessel and cargo?

Ans. I think if she had struck as she was going, neither cargo nor men would have been saved, and the vessel would have been lost and broken up.

11. When you slipped the cables and made sail, what was your purpose in relation to the vessel and cargo?

Ans. To run the ship ashore in the place we should judge best for the benefit of all concerned, to save life and property.

12. Whether or not was the vessel and cargo in imminent danger of being totally lost when you slipped the cables; and whether or not was the vessel voluntarily run on shore to prevent such loss?

Ans. Yes, sir, to both parts of the question.

13. Whether or not was the vessel seaworthy, and properly manned and equipped, when she sailed from New Orleans?

Ans. She was.

Cross interrogatories by C. P. Curtis, esq., counsel for Pliny Cutler.

1. What was the measurement of the Zamora? How many tons of merchandise had she on board when lost?

Ans. Her measurement was two hundred and seventy-six tons, and a little more. I cannot say how many tons she had on board; perhaps three hundred and fifty tons; her cargo was flour, corn, hemp, &c., a general assorted cargo.

2. What became of the Zamora? Was any of her cargo saved, and what part of it?

Ans. I left her on the rocks. Some cargo was saved; I saw it, but I can't say what part of it.

3. What was the length of her cables, and the size of the iron, and the weights of her anchors?

Ans. I don't know the length of the cables. I think their size was an inch and an eighth, I am not certain; to my best belief, the weight of anchors aboard was thirty-nine hundred pounds altogether.

4. If you had not slipped the cables, would not the barque have drifted ashore?

Ans. Yes, sir, stern foremost.

5. Would she not have struck the shore probably at, or near, the place where she actually struck?

[Ans.] No, sir, she would have struck on the breakers I have mentioned, which extend three-quarters of a mile further out than where she did strike.

6. How long after the barque struck did she keep free from water? Did she not fill in the course of half an hour?

Ans. She was deluged with water in about fifteen minutes after she struck the first blow.

7 Did you extend a protest, and before whom?

Ans. I did, before Mr. Hales.

8. What sail had you on when you struck? What was the course of the vessel and wind?

Ans. A reefed foresail and foretopmast staysail; the wind was about north northeast. We headed about southwest when we struck, and the shore bore so a hundred yards off when we lay quiet, and three hundred yards off from where we first struck.

A. A. FARNHAM.

UNITED STATES OF AMERICA,
District of Massachusetts:

This twenty-fourth day of March, in the year of our Lord eighteen hundred and forty-six, personally appeared before me the above named deponent, who, after being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposi-

tion was taken, was examined on written interrogatories by the parties hereinafter named, which, with the answers thereto, written down by me in his presence, after being carefully read over to him by me, were by him subscribed as and for his deposition, taken at the request of William A. Rea, to be used in an action pending between him and Pliny Cutler, before the district court of the United States of America for said district. And the adverse party was present, and said deposition was taken by consent of parties.

EDWARD G. LORING, *Counsellor*.

I, Joseph W. Ludwig, of South Boston, of lawful age to testify on oath, depose and say, in answer to interrogatories by F. C. Loring, esq., counsel for William A. Rea, libellant:

1. Whether you were on board the barque Zamora on her last voyage from New Orleans to Boston; and if so, in what capacity?

Ans. I was, as second officer.

2. Where were you on the fifteenth of December; and what was the weather then?

Ans. We were in Boston bay; the weather was thick and rainy; the wind at the northward and eastward, and heavy.

3. When did you make Plymouth light? What course were you then steering, and how long did you hold to it?

Ans. We made Plymouth light about ten o'clock of the fifteenth. We were heading to the eastward, and so held till two o'clock in the morning.

4. Whether or not you then attempted to wear ship, and with what success?

Ans. We attempted to wear ship, but failed.

5. Which way was the wind then, and what was the state of the wind and sea, and was the wind variable or steady?

Ans. The wind was from the northward and eastward, and variable, and blowing fresh, with a heavy sea running; it was a gale of wind.

6. Whether or not did you come to anchor that night or morning; if so, why?

Ans. We came to anchor about two in the morning; when we could not succeed in wearing ship, we anchored. We anchored because we should go ashore if we did not; we could not get off shore with sails, and we thought we could hold on till day-light.

7. How long did the anchors hold the ship?

Ans. They held for about an hour after she first fetched up.

8. Please describe what happened after she began to drag.

Ans. She kept dragging slowly till we got pretty near in, so that we could see heavy breakers astern of us, and we concluded we would slip the cables and make sail; we made sail; she ranged ahead and went by a point where we saw the heaviest breakers. And in about three quarters or half an hour after we slipped the cables, she struck, and knocked away the stern boat and wheel; she went over and appeared again to be afloat; then we saw a place on the beach which appeared

smoothest, and where there didn't appear to be so much breakers. We cut her mizen mast away, and got her head on to this place on the beach, and run her ashore.

9. For what purpose, and to what intent were the cables slipped, and sail made at that time?

Ans. To save what we could of vessel and cargo and our lives; we intended when we slipped the cables to run the vessel ashore.

10. Describe the appearance of the place towards which the vessel was drifting before the cables were slipped.

Ans. By the appearance I should think it was very rocky; it had heavy breakers and high land, it looked very bad at the time; it was very rocky.

11. If the cables had not been slipped, what, in your opinion, would have become of the vessel, cargo, and those on board?

Answer. I think she would have gone ashore in the heavy breakers, and vessel and cargo gone to pieces, and the lives been lost.

J. W. LUDWIG.

UNITED STATES OF AMERICA, *District of Massachusetts:*

This eighth day of April, A. D. 1846, personally appeared before me the above named deponent, who, after being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition is taken, was examined by the parties hereinafter named on written interrogatories, which, with his answers thereto, written down by me in his presence, were by him subscribed as and for his deposition. Taken at the request of William A. Rea, to be used in a libel pending between him, and before the district court of the United States of America, for said district; and the adverse party, though duly notified, did not attend; the said deponent being bound on a voyage to sea, is the cause of taking this deposition.

EDW. G. LORING, *Couns'r.*

BOSTON, *May* 4, 1846.

Captain A. A. Farnham, of Newburyport, late master of bark Zamora, of Boston, this day appeared at the office of the Manufacturers, Insurance Company, and identified, in my presence, the signature attached to questions and answers dated Bath, Maine, January 9, 1846, (as being his true hand.)

THOS. B. G. MESSINGER.

Question 1st. At what time did you bring the Zamora to anchor off the Monument?

Answer. At 5 30′ P. M., Monday, December 15, 1845, saw Scituate light bearing S. S. W., distant 8 miles; by the lead, drifting fast to the eastward and southward, but farthest southward; from 8 to 12, overhauled long ranges of both cables; at 2 o'clock A. M., Tuesday, December 16, let go both anchors; wind N. E. to N. N. E., unsteady.

Question 2nd. How far was the place of anchorage from the shore?

Answer. Three to four miles.

Question 3rd. How long did she remain at anchor?

Answer. From 2 to 6½ o'clock, A. M., or about four and a-half hours.

Question 4th. How far from the shore was she when the chains were slipped?

Answer. About a mile and a-half from the nearest point.

Question 5th. What circumstances, or combination of circumstances, induced you to order the chains slipped?

Answer. The ship drifting in a perilous manner, stern foremost towards the shore, with both anchors down.

Question 6th. What was said by you to any one on board relative to the slipping, immediately before it was done?

Answer. In conversation with my officers in the previous watches, we had concluded, if the anchors did not hold, as we hoped they would, it would be necessary to slip the cables to save the lives of all on board, in preference to let the ship drift on shore with the anchors down.

Question 7th. How far did the vessel run, and in what direction, after the slipping, before she went ashore?

Answer. About three miles, S. S. W., along shore.

Question 8th. At what time or in what order of time the masts went overboard, and whether they were cut away or otherwise?

Answer. At 7¼ o'clock she struck; about eight o'clock, A. M., cut away mizen mast to let ship lighten and get her head towards shore; the foremast about 12 o'clock, M., soon after the mainmast was cut away, all previous to 1 o'clock.

Question 9. Whether in your opinion the act of slipping the chains, and running the vessel ashore, operated to save more property than would have been saved if she had dragged ashore?

Answer. It did operate to save more cargo, though it was done with the view of saving the ship and lives on board.

BATH, MAINE, *January* 9, 1846.

The answers to the foregoing questions are made according to my recollection of the circumstances as they occurred.

A. A. FARNHAM,
Late master of bark Zamora of Boston.

I, Joseph W. Ludwig, of South Boston, mariner, on oath, declare that I was second officer of the bark Zamora on her last voyage from New Orleans for Boston; that the vessel was brought to anchor off the Monument near Plymouth at about two o'clock, A. M., on the 16th of December; that both anchors were dropped, and the whole length of both chains paid out; that said vessel continued to ride at anchor, but gradually drifting towards the shore, until about 6 o'clock, A. M., when she was about a mile from the shore Captain Farnham came on deck, and soon afterward went below again, and immediately returned, and on his return he gave orders to loose the foresail and foretopmast staysail; and after this was done he ordered the chains to be slipped, which was done, and the head of the vessel got towards the land, and run along the shore for about a mile and an half; she struck once or twice, apparently on a reef, and passed over it into deep water; the mizenmast was

then cut away, and the yards trimmed, so as to direct her course towards a place which appeared more smooth than the coast generally, and she was run bows on until she stopped; being about low water, she thumped as the tide rose, and continued to work further up, until she got within about 100 yards of high water mark. The fore and mainmasts then went by the board, either by cutting or without, this deponent not being certain on this point. At about 3, P. M., deponent left the wreck, and got ashore; after the vessel struck the first time the deck load of cotton, about 20 bales, was thrown off to lighten her.

This deponent further declared, that during the voyage of said bark, and until after she had been run ashore, he never, at any time, saw Captain Farnham drink any spiritous liquors, and that said Farnham appeared to be perfectly sober and collected at the time he gave orders to slip the chains as aforesaid.

JOSEPH W. LUDWIG.

Suffolk, ss:

Sworn to before me, January 5, 1846.

JOHN S. TYLER, *Notary public.*

And on the ninth day of May, 1846, the following agreement of parties was filed in court, viz:

U. S. DISTRICT COURT, *Massachusetts:*

W. A. REA,
vs.
PLINY CUTLER.

It is agreed that a decree be entered in favor of libellant for $2500 damages pro forma, upon a final decision of the case in the circuit or supreme court; or if the appeal should be withdrawn, the case is to be sent to an assessor under the direction of the court, to determine the amount due from the respondent, if the final decision should be in favor of the libellant; a reduction of the amount of the decree shall not in any event affect the question of costs.

B. R. CURTIS, *For respondent.*
F. C. LORING, *For libellant.*

This libel was entered at a special district court, held on the twenty-seventh day of January, A. D. 1846, and thence was continued from time to time, until this ninth day of May, A. D. 1846; and now, after a full hearing of the cause upon the facts proved, and the arguments of counsel, and mature deliberation thereon had, the court doth order, adjudge, and decree, by consent of parties, that the said William A. Rea recover against the said Pliny Cutler twenty-five hundred dollars damages pro forma, and costs of suit taxed at ; from which decree the said Pliny Cutler, the respondent, claims an appeal, as follows:

REA,
vs.
CUTLER,

In the above entitled cause the respondent claims an appeal, and for

reason therefor says, that the said libellant was not entitled to a decree for any contribution whatever, and that the said libel ought to have been dismissed with costs.

By his proctor, B. R. CURTIS.

Whereupon the said appeal was allowed by the court.

A true copy.

Attest: S. E. SPRAGUE, *Clerk*.

This appeal was entered at the May term, A. D. 1846, of this circuit court, and thence was continued to the present time. And now it is ordered, adjudged, and decreed by the court, that the decree of the district court in the premises be affirmed pro forma, with costs of suit taxed at .

And now the said Cutler claims an appeal to the Supreme Court of the United States, next to be holden at Washington, the seat of the National Government of the U. S., on Monday, the 7th day of December next, in the following words, to wit:

Circuit court U. S., Massachusetts district, Oct. term, 1846.

PLINY CUTLER, appl't,
vs.
WM. A. RAE.

The said Pliny Cutler claims an appeal from the final decree of this honorable court, in the said cause, to the Supreme Court of the United States, next to be holden at Washington, the seat of the National Government of the United States, on Monday, the seventh day of December next, and files the following reasons of appeal, viz:

1st. For that the said decree is erroneous, and not according to the law of the admiralty.

2nd. For that by the said decree the decree of the district court ought to have been reversed.

3d. For that the said Rae, libellant, hath no legal claim on this appellant for general average contribution by reason of the stranding of the vessel in the said libel mentioned.

4th. For that the case in the said libel set forth is not a case of admiralty and maritime jurisdiction under the Constitution and laws of the United States, and so the said libel ought to have been dismissed, and the decree of the said district court reversed.

B. R. CURTIS,
Proctor for respondent Cutler.

Whereupon said appeal is allowed by the court.

Attest: JAS. B. ROBB, *Clerk*.

Circuit court U. S., Mass. district, Oct. term, 1846.

PLINY CUTLER, appl't,
vs.
WM. A. RAE.

In the above entitled cause, the said Wm. A. Rae agrees to waive

the issuing and service of a citation, and agrees to take notice of the appeal and the entry thereof in the Supreme Court of the United States.

F. C. LORING.

UNITED STATES OF AMERICA:

The circuit court of the United States, within and for the Massachusetts district.

[SEAL.] *Massachusetts district, ss:*

To Charles Sumner, George S. Hillard, Edward G. Loring, William W. Story, George T. Curtis, and Charles L. Woodbury, esquires, or either of them.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you, to take the answers to the interrogatories hereunto annexed of Alden Gifford, of Boston, in said district, master mariner, a witness to be examined on behalf of the appellant, and to be used in a certain cause now pending in said court, wherein Pliny Cutler is appellant, versus William A. Rea, respondent.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, now holden at Boston, as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this eleventh day of September, in the year of our Lord one thousand eight hundred and forty-six.

JAS. B. ROBB, *Clerk*.

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

CIRCUIT COURT U. S., *Massachusetts district*.

In vacation.

CUTLER, appellant,
vs.
RAE, respondent.

Interrogatories to be proposed to Alden Gifford, of Boston, in said district, master mariner, a witness to be produced and examined on the part of the appellant.

1st. What is your name, age, occupation, and place of abode?

2nd. Have you followed seas? And, if yea, how long and in what capacities; and how *how* have you been employed of late, and for how long?

3rd. Whether or no were you employed to save the materials and cargo of the barque Zamora, when wrecked on Cape Cod? If yea, by whom, and for what purpose? Did you go to the spot? If yea, when, and how long after the said vessel was wrecked?

4th. State where in particular she was wrecked, and describe minutely and particularly the condition in which you found the vessel and cargo, and how the cargo was saved, and in what state it was, as to being damaged or otherwise. Did the barque, in fact, ever reach the shore? Was any of the cargo landed, or how otherwise was it taken from the vessel?

5th. Please annex to your deposition a plan, showing the characteristics and natural features of the place where the said vessel went ashore; and add such explanations as are necessary to make the plan fully understood.

6th. Was the exact place where the Zamora went ashore at all favorable for such purpose, or preferable for such purpose to any other place in that neighborhood?

7th. So far as concerned the cargo of the said vessel, do you know any reason why more of it was saved, or less damaged, in consequence of the said vessel going ashore at that particular place, rather than at any other place in the neighborhood?

8th. Please state whether or not the said vessel was a complete wreck; whether or not her bottom was broken off and floated away, and any and what part of her cargo washed out, and what became of her deck load.

9th. Did the mate say any thing, and what, respecting the vessel having struck on a point of rocks extending into the sea? If yea, what did he say? And mark on the plan where he said she struck.

B. R. CURTIS, *for app't*.

Cross interrogatories.

Cross interrogatories to be exhibited to said Gifford in behalf of the libellant.

First. Were you present at the time said vessel was wrecked? Did you see her when she struck? If not, please to state how soon you saw her after she is said to have struck.

Second. In your answer to the direct interrogatories, have you confined yourself to statements of facts within your own knowledge, or have you stated what you have heard from others, and do not know yourself?

Third. Was not a large part of the cargo of said vessel saved in good order, or but slightly damaged?

Fourth. Please to state how much of her cargo was so saved, and of what it consisted.

Fifth. Is said plan drawn by you, and from your own observation? Does it pretend to show where said vessel was before she dragged her anchors? If yea, did you see her there?

Sixth. Is there not near to, or not far from the place where the Zamora was found by you, a rocky point running into the ocean? If there be, please to state whether, if she had struck on that point, stern foremost, the vessel, cargo, and lives of the crew, would not have been exposed to greater or more certain danger than they were?

Seventh. If you have answered the inquiries in the 6 and 7 direct interrogatories, please to state how large a meaning you give to the word neighborhood, as there used.

The libellant objects to the latter part of the 4th interrogatory, to the 6th, 7th, and 9th, as leading, and to the 9th as seeking for improper testimony.

Eighth. When you saw the vessel was she afloat? Was there any, and how much, water around her at low tide? How deep was it at high tide around her?

F. C. LORING, *for lib't.*

A true copy.—Attest:

JAS. B. ROBB, *Clerk.*

I, Allen Gifford, of Boston, in the district of Massachusetts, of lawful age, being duly sworn, upon oath depose and say, in answer to the interrogatories to me propounded as follows, namely:

To the first interrogatory I answer as follows: I am fifty years of age; I am master mariner.

2. To the second interrogatory I answer as follows: I have followed the seas thirty-five years; I have been a master twenty-five years. I have spent the last three years in the construction of ships; and in the employment of the underwriters, more or less, for the last ten years.

3. To the third interrogatory I answer as follows: I was employed by Mr. Nugro, Mr. Balch, and Mr. Cartwright, the underwriters on the barque Zamora, to save that vessel and cargo, wrecked near Plymouth. I went to the spot; she was wrecked in the afternoon, at four o'clock, and I got to Plymouth the next afternoon, but I didn't reach the wreck until about thirty-six hours after she was wrecked.

4. To the fourth interrogatory I answer as follows: She was wrecked near Eel river, near the Monument land, but the name of the cove I forget; it was near the mouth of Eel river, about four miles southeast from Plymouth. The vessel was completely dismasted; every thing

gone except the bowsprit. The vessel lay on the rocks broadside to the shore, and her head to the southeast. The rudder was gone, and the bottom off, and lying on the shore about from fifty to a hundred yards from the wreck. The counter was considerably broken in; the hull was full of water; the sails and rigging had been got out and taken to a barn in the vicinity, and also some of the other materials from the ship. The spars were lying on the shore mainly. There were about twenty bags of cotton taken, swept from the deck, by the crew, lying along the shore; also numerous barrels of flour and bags of corn. Some of the cargo between decks was got out safe, consisting of cotton and hemp; there was some corn stowed among the cotton that was also got out dry; the cargo below was all wet; it consisted mainly of corn and flour. The whole cargo was discharged in lighters, and all brought to Boston, except one cargo sold in Plymouth. It was impossible to get it on shore where the vessel lay. At low water one could walk directly on board of her with dry feet; she was surrounded by water at high tide. There was a bank about thirty feet high, about fifty yards from the vessel, up which it was exceedingly difficult to get any part of the cargo; the shore was very rocky.

5. To the fifth interrogatory I answer as follows: I have produced a plan (marked A, by the commissioner) to be annexed to my deposition, which I have drawn from visiting the localities, therein given, on the 27th of October, 1846; and I have given all the explanations necessary upon the plan itself.

6. To the sixth interrogatory I answer as follows: The place where the Zamora went ashore, as regards saving the cargo, was no better than if she had gone ashore any where a mile farther south; if she had gone ashore farther north, there would have been a sandy beach over which the cargo might have been carried. For the purpose of saving the cargo, I don't think the place she went ashore was essentially worse than it would have been along for a mile south. I don't think the vessel could have been saved if she had gone ashore any where in the course of a mile farther south; but I think, if she had gone ashore farther north on the beach, she might have been saved.

7. To the seventh interrogatory I answer as follows: I think more of the cargo would have been saved if she had gone ashore farther north on the beach; but no more if she had gone ashore farther south for a mile along the rocks. The beach commenced about half a mile north of where the vessel lay. In my opinion there would have been no more or less of the cargo saved if she had gone ashore at any other place on the shore for a mile to the south, or a half a mile to the north, except where the rocks began to grow less, and the beach to begin. The rocky shore had the same general character.

8. To the eighth interrogatory I answer as follows: The vessel was a complete wreck. The bottom had been washed ashore. The deck load, I believe, was cotton, and had been lifted off the vessel and washed ashore, and when I arrived, the cotton lay along the shore. A good deal of the cargo had gone out at the bottom when it came off, consist-

ing of corn and flour. The corn sunk, and the flour floated on shore.

9. To the ninth interrogatory I answer as follows: The mate was lost. The second mate told me that the vessel first struck on a point of rock about a mile south, which he pointed out to me. He said that, at that point, the jolly boat was washed off the vessel; and I saw the jolly boat on the shore near the point where he said it was lost. The point named by the mate is marked "Stony Point" upon the plan which I have produced to be annexed.

Answers to cross interrogatories.

1. To the first cross interrogatory I answer as follows: I was not present when she struck, I was told that she struck about four o'clock in the afternoon, and about thirty-six hours after that hour I first saw her.

2. To the second cross interrogatory I answer as follows: In what I have before stated. I do not state as of my own knowledge that the vessel struck the point to the south, or the hour when she struck, or how the cotton on her deck found its way ashore. All that I state as occurring after my arrival at the wreck is given as of my own knowledge.

3. To the third cross interrogatory I answer as follows: The greater part of the cargo was saved in a damaged state. The flour and corn were most damaged, the cotton least. The greatest portion of the cotton and flour was saved. The cotton was slightly damaged. The damage to the corn and flour saved was, I should think, twenty-five per cent. All the cotton and hemp I believe was saved; the hemp was badly damaged.

4. To the fourth cross interrogatory I answer as follows: I have already answered this interrogatory in my previous answers.

5. To the fifth cross interrogatory I answer as follows: The plan is drawn by me from my own observation as I have already stated. It does not give the position of the vessel before she dragged her anchors.

6. To the sixth cross interrogatory I answer as follows: There is such a point as is here inquired about, about a mile south from where the vessel lay, I think if the vessel had struck on that point, as indicated, the cargo could have been saved as well as at the place where she lay. As to the effect of the striking of the vessel in that way in that place, upon the vessel and lives of the crew, it is impossible to form any opinion, as it is altogether uncertain.

7. To the seventh cross interrogatory I answer as follows: My meaning of the extent of the word "neighborhood" appears from the answers I have given.

8. To the eighth cross interrogatory I answer as follows: The vessel was not afloat when I saw her. There was no water at low tide on her shore side; there was a little on the other side; the water at high tide was nine or ten feet deep all around her.

ALDEN GIFFORD.

[For plat see original, page 40.]

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

On this twenty-ninth day of October, in the year eighteen hundred and forty-six, the aforesaid Alden Gifford personally appeared before me, and being first duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which this deposition was taken, gave the foregoing deposition by him subscribed in my presence, and the same was by me reduced to writing in his presence. Taken by virtue of the foregoing commission to be used in the cause therein mentioned.

Given under my hand and seal, on the day and year above noted.

GEO. T. CURTIS, *Commissioner of the circuit and district courts of the United States for Massachusetts district.*

Commissioner's fees	$6 00
Witness - -	2 50

I, James B. Robb, clerk of the circuit court of the United States, for the first circuit within and for the district of Massachusetts, certify, that the foregoing is a true copy of record and transcript of the papers filed in the said cause.

In witness whereof, I have hereto signed my name and affixed the seal of the said court, this seventh day of December, in the year of our Lord one thousand eight hundred and forty-six, and the seventy-first year of the independence of the United States of America.

JAMES B. ROBB, *Clerk.*

Filed January 6, 1847.